

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A. No.4615 of 2019

Sriram City Union Finance Ltd.,
Rep by its authorized representative,
Having Office at No.13, Angappan Naicken Street,
Chennai and its inter alia divisional branch at
No.114, Suriyavel Tower, Kamaraj Salai,
Near Balaji Theater, Kamaraj Salai,
Puducherry. Appellant.Respondent

Versus

1.Sadagopan

2.Jaya

.... Respondents/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 37 of Arbitration and Conciliation Act of 1996, to set aside the order and decretal order dated 25.09.2019, passed by the Principal District Judge at Puducherry in A.O.P.No.9 of 2019.

For Appellant : Ms.Janani for
Mr.K.V.Ananthakrishnan
For Respondents: Mr.Prakash Adiyapadham

JUDGMENT

This appeal has been filed to set aside the order and decretal order dated 25.09.2019, passed by the Principal District Judge at Puducherry in A.O.P.No.9 of 2019.

2. The succinctly stated facts which led to file this appeal are as follows:-

(i) The first respondent herein availed car loan from the appellant herein and entered into an agreement dated 28.11.2014. The second respondent is the guarantor of the said loan. The first respondent committed default in payment of installment. Therefore, the appellant has initiated arbitration proceedings and issued notice to the respondents. A sole arbitrator was appointed and the arbitrator appears to have sent notice to the respondents. The respondents received the notice and failed to appear before the arbitrator to contest the case. Hence, the respondents were set exparte and an exparte award was passed on 25.01.2017. Challenging the same, an application under section 34(1) of the Arbitration and Conciliation Act, 1996, has been

filed by the respondents before the learned Principal District Judge, Pondicherry.

(ii) The main contention of the respondents before the learned Principal District Judge is that notice was not served on them about the arbitration proceedings. They came to know about the award passed, only during the execution proceedings. The learned Principal District Judge allowed the application under Section 34(1) and had set aside the award dated 25.01.2017. The learned counsel for the appellant challenging the above said award, the present appeal has been filed.

3. The learned counsel appearing for the appellant vehemently contended that the learned Principal District Judge had set the appellant as *ex parte* and no opportunity has been given to the appellant to contest the matter and the petition filed to set aside the *ex parte* order was also returned as not maintainable and proceeded to set aside the award only on the basis of the statement given by the respondents herein. Hence, he submitted that the learned Principal District Judge has not properly conducted the proceedings and without any evidence, has come to the conclusion that notice was not served, even without looking at the documents filed before the arbitrator.

4. Whereas, the learned counsel appearing for the respondents submitted that the respondents are actually residing in Pondicherry and not in Tindivanam. But, the notice of the arbitration proceedings, was sent to Tindivanam address. Only the execution proceedings notice was served at Pondicherry address. Hence, it is contended that the court below has rightly held that the notice was unserved and had set aside the award. Therefore, there is no need for interference by this Court.

5. Perused the entire materials. As narrated above, the arbitration proceedings were initiated by the appellant for the alleged default in installment of loan amount by the respondents. The Arbitrator passed an *ex parte* order by recording that despite notice was served, the respondents did not appear before the Arbitrator. The above said award was put to challenge by the respondents merely on the ground that no notice was served on them. While hearing an application under Section 34 (1), the learned Principal District Judge without even perusing the documents by summoning the documents from the arbitrator, presumed himself on the basis of the submissions made on behalf of the learned counsel for the respondents. It is also relevant to note that the appellant has also entered appearance, but they were set *ex parte* by the Court below. An application was filed by the appellant to set aside the *ex parte* order and the same was returned as not maintainable. Therefore, no opportunity was given to the appellant to advance/defend the case and the Court below had set aside the award holding that no notice was served. Such finding of the Court below, is nothing but perverse for the simple reason that without adverting to any documents as to find

out whether notice has been properly served or not, but, simply swayed away by the submissions. Such findings, without advertent to the documents and evidence, cannot be sustained in the eye of law. The order of the learned Principal District Judge has to be set aside at this stage.

6. Now, the learned counsel appearing for the respondents submitted that the respondents are willing to be present before the arbitrator and an opportunity may be given to contest the matter.

7. Since the award itself is an *ex parte* order, this Court also feels that an opportunity has to be given to the respondents. Accordingly, the same arbitrator shall hear the matter fresh and the respondents shall undertake to appear before the arbitrator on 04.06.2020, to defend the case. The arbitrator shall also issue fresh notice to the respondents irrespective of the direction of this Court to appear on 04.06.2020. In the event of the respondents failure to appear before the arbitrator, it is open to the arbitrator to proceed the matter afresh as *ex parte*.

8. With the above directions, the appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
Puducherry.

+1 cc to Mr.K.V.Ananthakrishnan, advocate, sr.24202
+1 cc to Mr.E.Anbarasan, advocate, sr.24152.

Ad(co)
krd 25/6

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